

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**Brandon Wayne Powell  
Debtor**

**CHAPTER 13  
CASE NO.: 23-51486-KMS**

**Servbank, SB  
Movant**

**V.**

**Brandon Wayne Powell  
Respondent**

**WARREN A. CUNTZ, JR., TRUSTEE,  
Respondent**

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY, TO  
ABANDON PROPERTY AND OTHER RELIEF**

**COMES NOW**, Servbank, SB (“Movant”) a secured creditor herein, pursuant to 11 U.S.C. §§ 362 and 554(b) and moves for relief from the automatic stay, for abandonment and for other relief and in support would show unto the Court the following:

1. Debtor executed a promissory note secured by a mortgage or deed of trust on certain real property located at 103 Water Oak Dr., Lucedale, Mississippi 39452 (“Property”). The promissory note is either made payable to Movant, has been duly indorsed, or Movant, directly or through an agent has possession of the promissory note and may enforce the promissory note as a transferee in possession. Movant is the original mortgagee or beneficiary or the assignee of the mortgage or deed of trust. If the original promissory note is lost or destroyed, then Movant will seek to prove the promissory note using a lost note affidavit. Copies of said deed of trust and promissory note are attached collectively hereto as Exhibits “A” and “B”, respectively. A copy of the assignment to Movant is attached hereto as Exhibit “C”.

2. In the event the automatic stay in this case is modified, this case dismisses, and/or the Debtor obtains a discharge and a foreclosure action is commenced on the mortgaged property,

the foreclosure will be conducted in the name of Movant or Movant's successor or assignee.

Movant, directly or through an agent, has possession of the note. The Note is endorsed in blank.

Movant is the beneficiary or the assignee of the Deed of Trust.

3. Debtor entered into a Mortgage Recovery Advance Deed of Trust that altered the original Note. A copy of the Mortgage Recovery Advance Deed of Trust is attached hereto as Exhibit "D".

4. Movant has not been provided adequate protection with respect to its claim secured by the Property.

5. Good and sufficient cause exists to lift, terminate and annul the automatic stay of 11 U.S.C. § 362, and for the Property to be abandoned.

6. As of April 15, 2025, the unpaid principal balance was \$146,027.66. Debtor is due seven post-petition payments from October 2024 – April 2025, totaling: \$8,872.01. See the paylog attached hereto as Exhibit "E". As of April 15, 2025, the total post-petition delinquency is \$8,511.67, which includes a credit of the suspense balance of \$360.34. See Exhibit "E". As of April 15, 2025, the total payoff amount was approximately \$164,864.07.

7. Debtor is in default on their obligations to Movant in that Debtor has failed to make installment payments when due and owing pursuant to the terms of the above-described Note and/or Deed of Trust.

8. Upon an order granting relief from the stay as requested herein, Movant is entitled to pursue its legal rights including, but not limited to, foreclosure.

9. Movant specifically requests permission from this Court to communicate with the Debtor and Debtor's counsel to the extent necessary to comply with applicable non-bankruptcy law.

10. Movant requests that the 14-day stay prescribed by Federal Rule of Bankruptcy Procedure 4001(a)(3) be waived and that the order granting this Motion be effective immediately

upon entry. Good cause exists for this waiver due to continued accrual of an increasing debt arrearage and ongoing violation of Movant's contractual rights.

11. Movant is available to offer and provide Debtor with information regarding a potential Forbearance Agreement, short sale, deed in lieu, loan modification, Refinance Agreement, or other loan workout/loss mitigation agreement and to possibly enter into such agreement with Debtor without further order of the Court should Debtor so request.

12. In addition to the other amounts due to Movant reflected in this Motion, as of the date hereof, in connection with seeking the relief requested in this Motion, Movant has also incurred additional legal fees plus costs in the amount \$199.00. Movant reserves all rights to seek an award or allowance of such fees and expenses in accordance with applicable loan documents and related agreements, the Bankruptcy Code and otherwise applicable law.

13. Movant requests that the Order granted hereon be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

**WHEREFORE**, Movant requests that an order for relief from the automatic stay and to abandon property pursuant to 11 U.S.C. §§ 362 and 554, to terminate any other restraint against Movant exercising its rights as to its collateral and authorize Movant to take possession, sell, lease, or otherwise dispose of the Property, that the order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code, to waive the 14-day stay prescribed by Federal Rule of Bankruptcy Procedure 4001(a)(3), and for reasonable attorneys' fees and costs incurred herein. Movant prays for such other and general relief as this Court may deem just.

Respectfully submitted,

**BENNETT LOTTERHOS SULSER  
& WILSON, P.A.**

/s/ Charles Frank Fair Barbour

**Charles Frank Fair Barbour, MSB # 99520**  
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**CERTIFICATE OF SERVICE**

I, Charles Frank Fair Barbour, do hereby certify this day that I electronically filed the above and foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Jennifer A. Curry Calvillo at [jennifer@therollinsfirm.com](mailto:jennifer@therollinsfirm.com)

Warren A. Cuntz, Jr. at [wacuntzcourt@gport13.com](mailto:wacuntzcourt@gport13.com)

US Trustee at [USTPRegion05.AB.ECF@usdoj.gov](mailto:USTPRegion05.AB.ECF@usdoj.gov)

And I mailed via US Mail, postage prepaid, a copy to the following:

Brandon Wayne Powell  
103 Water Oak Dr.  
Lucedale, Mississippi 39452

/s/ Charles Frank Fair Barbour